IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVI APPELLATE SIDE JURISDICTION

WRIT PETITION NO 7235 OF 2005

Nilkanth N Patil ....Petitioner

vs

The Addl Collector and
Competent Authority and ors.. ..Respondents

Mr. Anilkumar O Singh with Mr.S.D.Patil for petitioner

Mrs V.S.Mhaispurkar AGP for respondents

CORAM: S.U.KAMDAR J.

Dated 5.l2.2005

P.C:

l. By the present petition the impugned order dated l6.8.2005 passed by the Asst Commissioner, Konkan Division, in exercise of power conferred under the Urban Land Ceiling Act has been challenged. The contention before both competent authority and the appellate authority is that the computation of the amount claimed by the government for exemption of the land is not accurate and correct. The said valuation has been challenged on two counts. First, it has been contended that the surplus land computed for the purpose of arriving at such a valuation is not correct. It has been contended that the government was duty bound to deduct from the surplus land l5% which was reserved

under the RG and 25% which the petitioner is required to hand over to the Corporation under the provisions of the exemption order should be excluded for the purpose of computation of the surplus land and valuation which is required to be paid by the petitioner as per the provisions of the ULC Act to that extent to the Corporation.

2. In so far as the aforesaid contention is concerned I am not inclined to accept the same for two reasons. Firstly, the order of surplus land was passed under section 8(4) of the ULC Act as far back as in l989. The said order is not challenged by the petitioner. It is not possible now to consider whether the declaration of surplus land under the said order is correct or not. Secondly, I am not inclined to accept the contention because before the competent authority the aforesaid issues were raised and the competent authority has pointed out that in so far as l5% R G is concerned though the said land is reserved for the recreational ground the petitioner as a builder has utilised the FSI of the said property for the commercial purpose and thus was required to pay cost for the same. In so far as 25% of the constructed area is concerned which is required to be handed over to the Corporation is concerned it has been pointed out

that the petitioner on the one hand seeks exemption of the said 25% area from the surplus land and on the other hand he is claiming cost of construction from the Corporation and thus the competent authority has rejected the same. In appeal the appellate authority has confirmed the said finding by giving cogent reasons that the view taken by the competent authority is legal and is in consonance with the provisions of the ULC Act.

3. In writ jurisdiction I do not find any reason whatsoever to interfere with either of the findings recorded by the competent authority and confirmed by the appellate authority under the provisions of the ULC Act. It is not possible for me in writ jurisdiction to re-examine and consider the surplus area once the order was passed under section 8(4) of the ULC Act and that order having attained finality as it was not challenged. In that light of the matter it is not possible to entertain the said dispute pertaining to surplus area in writ jurisdiction.

4. The next contention raised is that the valuation ought to have been as of l9.8.2004 of the said land and not of 2002. Even irrespect of this contention both the authorities below have held

that from the documents it has been found that application for permission for carrying out construction on the said land was made only in 200l and accordingly permission was granted on ll.8.2002 and therefore it is the relevant date for the purpose of arriving at the valuation of the land since the construction having commenced on ll.8.2002. In that light of the matter there is no merit in the petition. Same is therefore dismissed. No order as to costs.